

In the matter of: South Dayton Dump & Landfill Dispute Resolution Agreement

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 5

EPA Region 5 Records Ctr.



382385

IN THE MATTER OF:
SOUTH DAYTON DUMP AND
LANDFILL

ADMINISTRATIVE SETTLEMENT
AGREEMENT AND ORDER ON
CONSENT FOR REMEDIAL
INVESTIGATION/FEASIBILITY
STUDY

City of Moraine

U.S. EPA Region 5

Montgomery County, Ohio

CERCLA Docket No. V-W-06-C-852

Respondents

Proceedings Under Sections 104, 107 and
122 of the Comprehensive Environmental
Response, Compensation and Liability Act,
as amended, 42 U.S.C. 119604, 9607, and
9622

Listed in Appendix C

I. DISPUTE RESOLUTION AGREEMENT

1. The Parties to the Administrative Settlement Agreement and Order on Consent (ASAOC) for Remedial Investigation/Feasibility Study (RI/FS) for the South Dayton Dump & Landfill Superfund Site (Site), Docket Number V-W-06-C-852, excluding Kathryn Boesch and Margaret Grillot, who are not part of the Group defined in Section II which is performing the Work required by the ASAOC, have agreed to resolve a dispute over the scope of the FS for Operable Unit One (OU 1) at the Site (Dispute). This agreement (Agreement) documents the resolution of the Dispute, pursuant to paragraph 64 of Section XV, Dispute Resolution, of the ASAOC. As set forth in paragraph 64 of the ASAOC, this Agreement shall, upon signature by the Parties, be incorporated into and become an enforceable part of the ASAOC.

II. BACKGROUND

2. The Respondents to the ASAOC include Hobart Corporation (Hobart), Kelsey Hayes Company (Kelsey-Hayes), and NCR Corporation (NCR). These three Respondents (the Group) are and have been performing the Work required by the ASAOC under the direction and oversight of the United States Environmental Protection Agency (EPA). On October 15, 2010, the Group gave EPA formal notice of a Dispute over the scope of the presumptive remedy being evaluated for OU1 at the Site in the Feasibility Study (FS) submitted by Respondents. Specifically, the Group objected to comments by EPA requiring the Group to evaluate alternatives for containing shallow groundwater at the Site boundary, and to evaluate active landfill gas collection systems in connection with the alternatives presented for covering (capping) the Presumptive Remedy Area in the FS for OU1. The Parties agree that the term Presumptive Remedy Area shall mean:

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- Parcel 5054 (Valley Asphalt)
- Parcels 5171, 5172, 5173, 5174, 5175, 5176 (Boesch and Grillot - Dryden Road)
- Parcel 5177, including road easement but excluding water and submerged portions of Quarry Pond (Boesch and Grillot, center of Site)
- Part of Parcels 3278, 3058, 3057 and 3056, including embankments (MCD property) onto which solid waste extends and
- Part of Lot 5178 containing north Quarry Pond embankment (Boesch and Grillot)

See Figure 1, attached, for a depiction of the Presumptive Remedy Area.

3. The investigation of the Site has documented elevated levels of methane, naphthalene and Volatile Organic Compounds (VOCs) in landfill gas. There are a number of operating businesses located on the Site, above or immediately adjacent to fill material and in close proximity to the gas probe locations where elevated levels of VOC and methane were detected. By a letter dated October 5, 2010, EPA had directed Respondents to submit a work plan (Work Plan) for a Vapor Intrusion (VI) Investigation (VI Study) to address the risks from VI to residents and businesses in buildings on and adjacent to the Site.

III. AGREEMENT

The Parties, Hobart, Kelsey Hayes, NCR and EPA, agree to resolve the Dispute as set forth in this section.

4. The Parties agree that the Respondents shall conduct the VI Study, as required by EPA, pursuant to Paragraph 37 (c) of the ASAOC, as an interim response action. EPA has given the Group a copy of the newly issued EPA Region 5 Vapor Intrusion Guidebook (Guidebook) and the Parties have agreed that the Respondents will prepare their VI Work Plan, which will include Field Sampling Plan (FSP) and Quality Assurance Project Plan (QAPP) Addenda, in accordance with this new guidance and other relevant guidance (e.g., FSP and QAPP guidance). The Parties agree that the Work Plan will provide for sub-slab sampling, on an expedited schedule of any of the following structures which are of slab-on-grade construction or have basements or enclosed crawl spaces (see highlighted structures on Figure 2, attached, for an illustration of the structures for which sub-slab sampling is anticipated):

A. Structures On Site West of Dryden Road:

- 3 building structures on Lot 5054
- 3 building structures on Lot 5171
- 2 building structures on Lot 5172
- 1 building structure on Lot 5173
- 1 building structure on Lot 5174
- 1 building structure on Lot 5175, and

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B. Structures On Site or Adjacent to Site Along East River Road:

4 building structures on Lot 4610 (Barnett; on-Site)
2 building structures on Lot 3207
1 residence on Lot 3253; and
1 building structure on Lot 3254.

Any additional structures on the Site that are, or may be, occupied will be evaluated to determine the need for VI sampling.

The Parties agree that if any structure on or adjacent to the Site that is or may be occupied has no slab (e.g., dirt or gravel floor) that Respondents will take indoor air samples (see Section 6.6 of Guidebook).

The Parties agree that the Respondents shall submit a Work Plan for the VI Study required by EPA by December 17, 2010. The Parties agree that if identified contaminant concentrations pose more than a 1×10^{-4} cancer risk or a hazard index greater than 1.0 through the VI pathway to current or potential future receptors, or if VI sampling results show an exceedance of 10% of the Lower Explosive Limit, EPA may require actions to mitigate those risks.

5. The Parties also agree that the Respondents shall submit a work plan (Shallow Groundwater Work Plan) including FSP and QAPP Addenda, for additional characterization of the top five feet of shallow groundwater in the vicinity of Monitoring Well 210 (MW- 210) at the locations in the Respondent's draft MW-210 Shallow Groundwater Investigation Letter Work Plan, dated March 16, 2010, and at locations no greater than 100 feet apart at the Site boundary starting: 1. adjacent to Dryden Road east of VAS-09; 2. continuing south to the Site boundary at the intersection of Dryden Road and East River Road; 3. continuing west along the south side of the access road to Lot 4610, with a sampling point at the northeast corner of Lot 4610; 4. continuing south along the east boundary of Lot 4610 to Lot 3254 (skipping the Site boundary around Lot 3252); and 5. continuing southwest along the East River Road boundary of the Site to a location east of VAS-22. See highlighted area on Figure 3, attached, for an illustration of the sampling area. The data quality objectives for the groundwater samples will include, but are not limited to, detecting VOCs and naphthalene in shallow groundwater at the Site boundary that pose more than a 1×10^{-6} cancer risk or a hazard index greater than 1.0 through the vapor intrusion pathway to current or potential future receptors. The samples may be collected using direct push technology, and will be collected using low-flow sampling and groundwater stabilization procedures consistent with those developed for the vertical aquifer sampling previously conducted during RI/FS Work at the Site provided the low-flow sampling and groundwater stabilization procedures meet the data quality objectives required for the VI Study. The sampling intake will be set approximately 2.5 feet below the water table. This Shallow Groundwater Work Plan for additional characterization of groundwater shall be submitted by December 17, 2010.

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6. The Parties further agree that EPA withdraws its comments on the Streamlined Feasibility Study Report Operable Unit One (OU 1) (OU 1 FS Report) which required presentation of an alternative for OU 1 to address containment of shallow groundwater as part of the Presumptive Remedy for OU 1. The Parties also agree that EPA withdraws its OU 1 FS Report comments requiring Respondents to evaluate alternatives for active landfill gas collection systems as part of the Presumptive Remedy for OU 1.

7. The Parties agree that the Respondents will evaluate alternatives for passive landfill gas, including methane and non-methane organic compounds, venting systems for areas of concern at the Site as part of a revised submission of the OU 1 FS Report. The alternative descriptions of the passive landfill gas systems in the revised OU 1 FS Report shall include, but not be limited to, information concerning the type, configuration, and locations of each system evaluated, including potential monitoring points, with the final details to be determined as part of the remedial design process. The alternative descriptions will also include any anticipated pre-design studies, as well as anticipated monitoring, including sample locations, analytical parameters and frequency, that will be conducted after the passive system is in place, to confirm the system is functioning properly and to further evaluate the need for active landfill gas control as part of the operation and maintenance plan for OU 1. The Parties agree that the evaluation of alternatives for active landfill gas collection systems will be deferred to a decision point based on the monitoring conducted pursuant to the operation and maintenance plan for OU1. If required based on monitoring results, active landfill gas collection systems would be evaluated via the Explanation of Significant Difference (ESD) process for OU 1 or, if timing is appropriate, during preparation of the OU2 FS Report.

8. The Parties agree that the Respondents shall submit the revised OU 1 FS Report, re-named as the Streamlined Remedial Investigation and Feasibility Study Report for Operable Unit One, consistent with EPA's comments thereon as modified by and consistent with this Agreement, by January 31, 2011.

9. The Parties agree that the draft Remedial Investigation Report Operable Unit One (OU 1 RI Report) which the Respondents submitted in May, 2010, shall be renamed the Operable Unit Two (OU-2) Planning Support Document, and shall be revised to address EPA's comments on the report within 60 days of receipt of EPA's comments. Further, the Parties agree that the deadline may be extended to avoid interference with deadlines for the remaining deliverables with the agreement of both Parties. Such agreement will not be unreasonably withheld.

10. The Parties agree that the Respondents shall submit a draft Technical Memorandum for the data quality objectives (DQOs) for the-RI/FS Work for OU-2 (OU-2 DQO Tech Memo) at this Site by no later than March 31, 2011.

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The Undersigned Party enters into this Agreement which shall, upon signature by the Parties, be incorporated into and become an enforceable part of the Administrative Settlement and Order on Consent in the matter of the South Dayton Dump & Landfill Site.

Agreed this 3rd Day of December, 2010

For Respondent: Kelsey-Hayes Company

Signature: Robin Walker-Lee

Name: Robin Walker-Lee

Title: Vice President & General Counsel

Address: 12001 Tech Center Drive
Livonia, MI 48150

The Undersigned Party enters into this Agreement which shall, upon signature by the Parties, be incorporated into and become an enforceable part of the Administrative Settlement and Order on Consent in the matter of the South Dayton Dump & Landfill Site.

Agreed this ____ Day of December, 2010

For Respondent: _____

Signature: _____

Name: _____

Title: _____

Address: _____

The Undersigned Party enters into this Agreement which shall, upon signature by the Parties, be incorporated into and become an enforceable part of the Administrative Settlement and Order on Consent in the matter of the South Dayton Dump & Landfill Site.

Agreed this 9th Day of December, 2010

For Respondent: NGR Corporation

Signature: Edward Gallagher

Name: Edward Gallagher

Title: Law Vice President

Address: 250 Greenwich St.
35th Floor
New York NY 10007

It is so ORDERED AND AGREED this ____ Day of _____, 2010

By: _____ Date: _____

Richard C. Karl, Director
Superfund Division
U.S. Environmental Protection Agency
Region 5

The Undersigned Party enters into this Agreement which shall, upon signature by the Parties, be incorporated into and become an enforceable part of the Administrative Settlement and Order on Consent in the matter of the South Dayton Dump & Landfill Site.

Agreed this 10 Day of December, 2010

For Respondent: Hobart Corporation a subsidiary of

Signature: Chris O'Hery

Name: CHRISTOPHER O'HERY

Title: Executive Vice President

Illinois Tool Works Inc.

Illinois Tool Works Inc.
Address: 3600 WEST LAKE AVENUE
GLENVIEW, IL 60026.

It is so ORDERED AND AGREED this 15th Day of DECEMBER, 2010

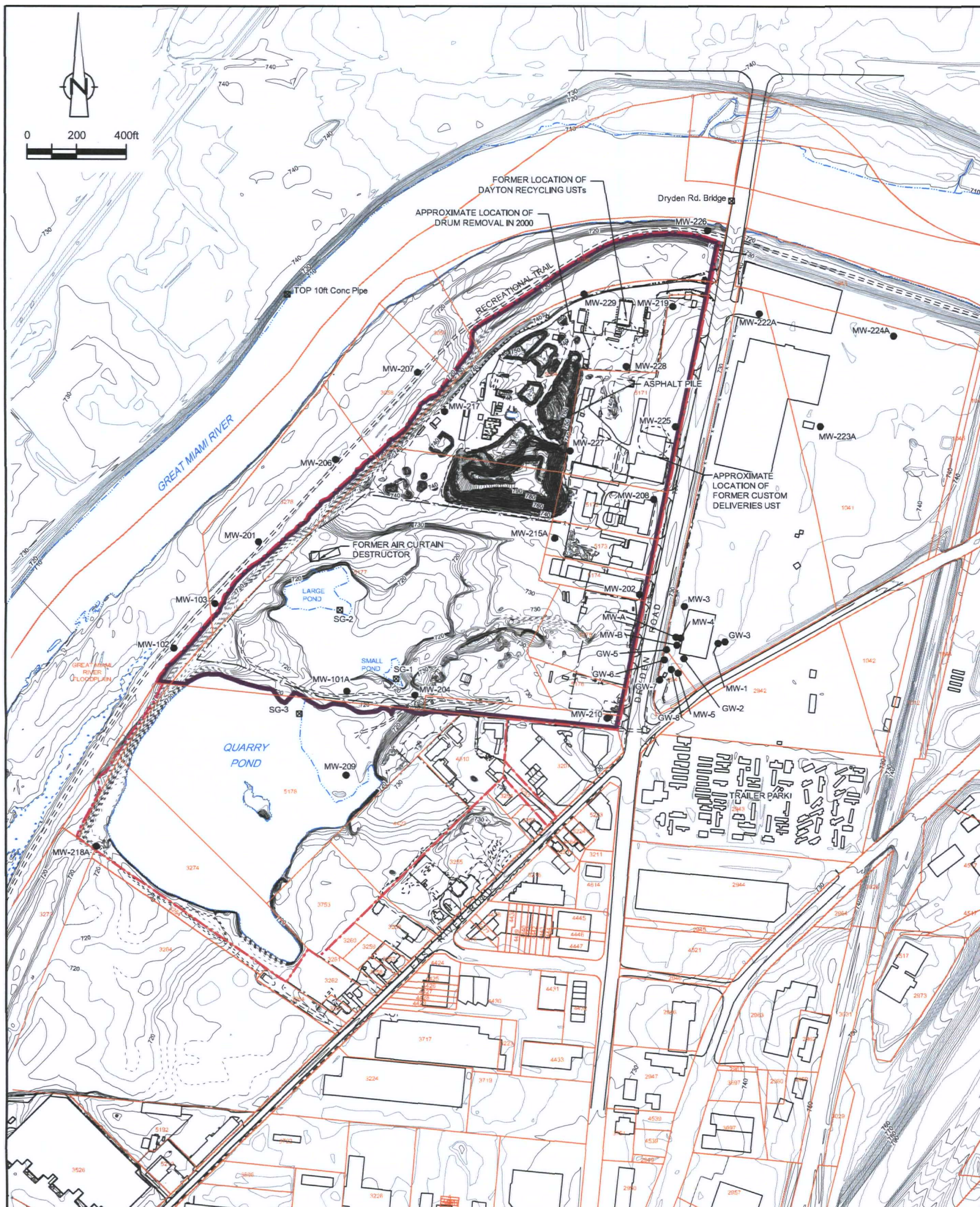
By: [Signature]

Richard C. Karl, Director

SE Superfund Division

U.S. Environmental Protection Agency
Region 5

Date: 12/15/10



LEGEND

- APPROXIMATE SITE BOUNDARY
- 730 --- EXISTING GROUND CONTOUR (1 FOOT INTERVAL)
- EDGE OF WATER
- PARCEL BOUNDARY
- 3204 LOT NUMBER
- MW-206 ● MONITORING WELL LOCATION
- SG-1 ☒ STAFF GAUGE LOCATION
- APPROXIMATE OPERABLE UNIT 1 BOUNDARY

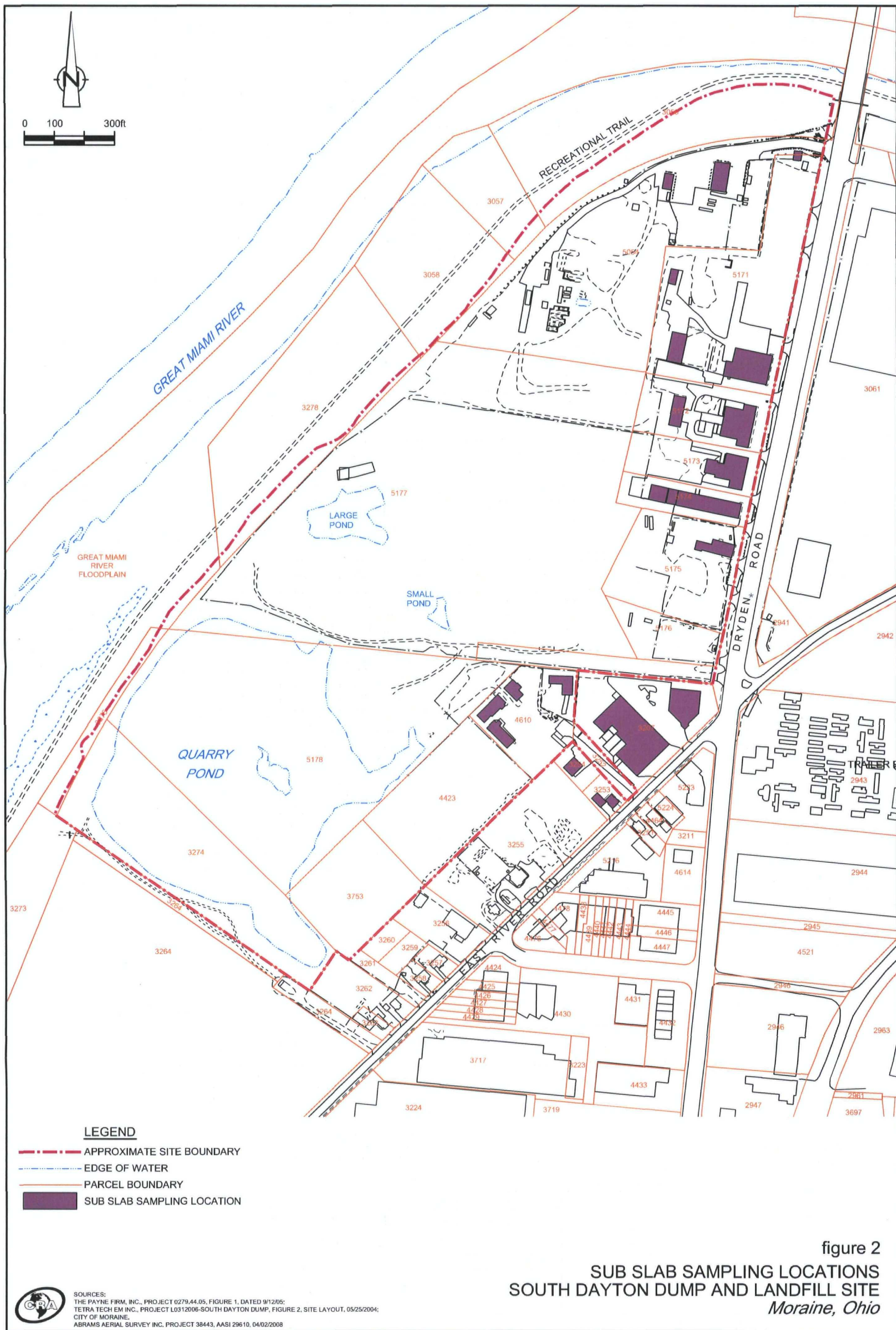
NOTE:
LIMIT OF CAP PLACEMENT, ESPECIALLY NORTH OF THE RECREATIONAL TRAIL
ON LOT 3056 AND 3057, WILL BE DETERMINED DURING REMEDIAL DESIGN.



SOURCES:
THE PAYNE FIRM, INC., PROJECT 0279.44.05, FIGURE 1, DATED 9/12/05;
TETRA TECH EM INC., PROJECT L0312006-SOUTH DAYTON DUMP, FIGURE 2, SITE LAYOUT, 05/25/2004;
CITY OF MORAINES
ABRAMS AERIAL SURVEY INC. PROJECT 38443, AASI 29610, 04/02/2008

figure 1

APPROXIMATE BOUNDARY OF OPERABLE UNIT 1 SOUTH DAYTON DUMP AND LANDFILL SITE Moraine, Ohio



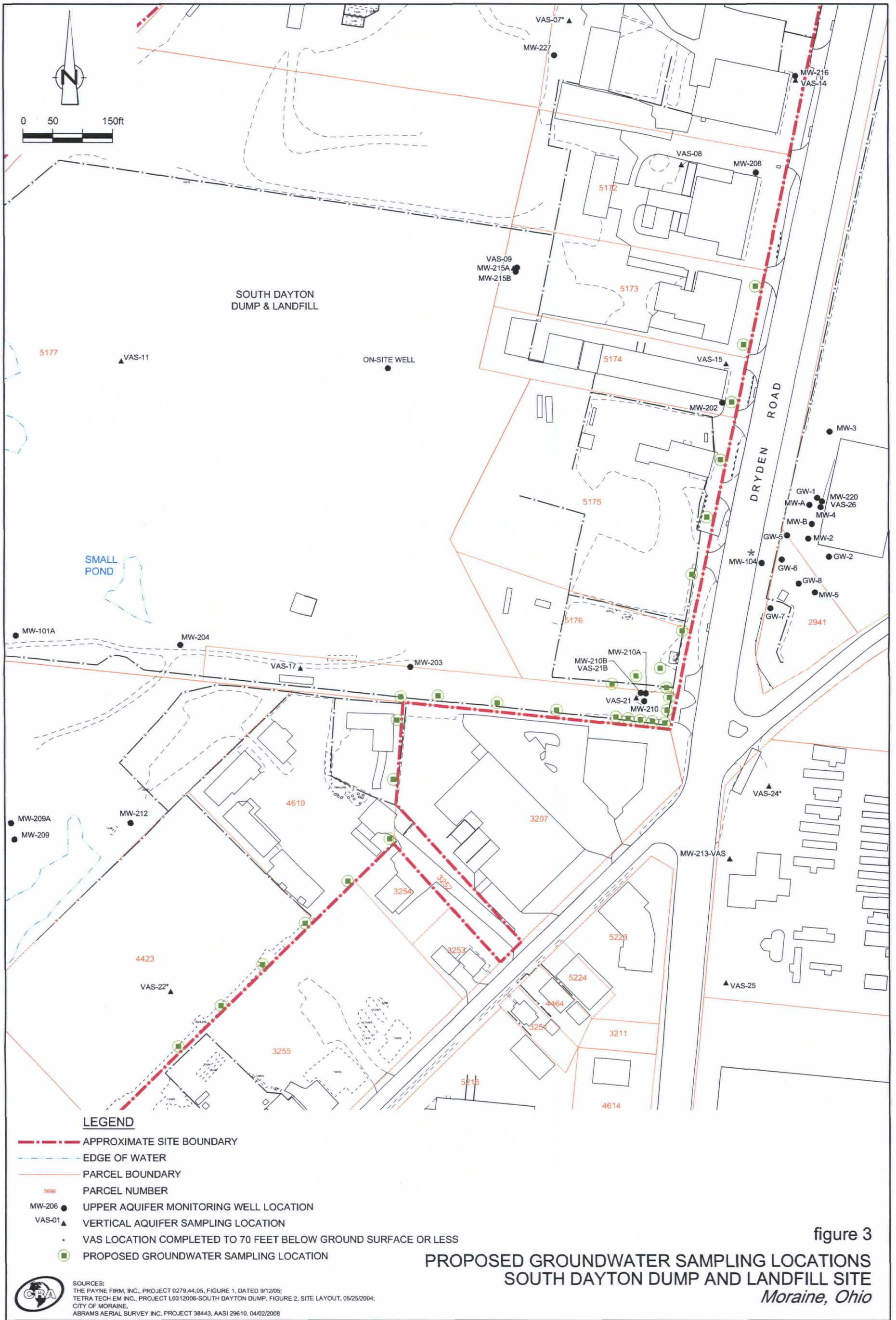


figure 3
PROPOSED GROUNDWATER SAMPLING LOCATIONS
SOUTH DAYTON DUMP AND LANDFILL SITE
Moraine, Ohio